



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA- 2012-0081]

Qualification of Drivers; Application for Exemptions; Implantable Cardioverter Defibrillators

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from four individuals for an exemption from the prohibition against persons with an implantable cardioverter defibrillator (ICD) in the Federal Motor Carrier Safety Regulations (FMCSRs), due to syncope or likelihood of causing any loss of ability to operate a commercial motor vehicle (CMV) safely. FMCSA requests public comments on these applications for an exemption. If granted, the exemption would enable these individuals with ICDs to operate CMVs in interstate commerce.

DATES: Comments must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA-2011-(0081) using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the Federal Register on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

FOR FURTHER INFORMATION CONTACT: Benisse Lester, M.D., Chief Medical Officer, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of

Transportation, 1200 New Jersey Avenue, S.E., Room W64-(), Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA- 21) [Pub. L. 105-178, June 9, 1998, 112 Stat. 107, 401] as amended 49 U.S.C. 31315 and 31136(e) provides authority to grant exemptions from many of the Federal Motor Carrier Safety Regulations (FMCSRs). On August 20, 2004, FMCSA published a final rule implementing section 4007 (69 FR 51589). Under this rule, FMCSA must publish a notice of each exemption request in the Federal Register (49 CFR 381.315(a)). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the Federal Register (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption

may be renewed (49 CFR 381.315(c) and 381.300(b)). The four individuals listed in this notice have requested an exemption from the ICD prohibition in 49 CFR 391.41(b)(4), which applies to drivers who operate CMVs as defined in 49 CFR 390.5, in interstate commerce. Section 391.41(b)(4) states that a person is physically qualified to drive a commercial motor vehicle if that person has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.

FMCSA provides medical advisory criteria for use by medical examiners in determining whether drivers with certain medical conditions, procedures, and/or treatments should be certified to operate commercial motor vehicles in interstate commerce. The advisory criteria indicate that: The term “has no current clinical diagnosis of” (1) a current cardiovascular condition, or (2) a cardiovascular condition which has not fully stabilized regardless of the time limit. The term “known to be accompanied by” is designed to include a clinical diagnosis of a cardiovascular disease (1) which is accompanied by symptoms of syncope, dyspnea, collapse or congestive cardiac failure; and/or (2) which is likely to cause syncope, dyspnea, collapse, or congestive cardiac failure.

It is the intent of the FMCSRs to render unqualified a driver who has a current cardiovascular disease which is accompanied by and/or likely to cause symptoms of syncope, dyspnea, collapse, or congestive cardiac failure. However, the subjective decision of whether the nature and severity of an individual’s condition will likely cause

symptoms of cardiovascular insufficiency rests with the medical examiner and the motor carrier.

The advisory criteria states that implantable cardioverter defibrillators are disqualifying due to risk of syncope. The emphasis should be on the underlying medical condition(s) which require treatment and the general health of the driver.

In the case of ICDs the underlying condition for which the device was placed may place the driver at risk for syncope or gradual or sudden incapacitation that may be likely to result in loss of ability to safely control a CMV. ICDs also may deploy inappropriately, which would result in loss of ability to safely control a CMV.

Individual Applications for Exemption - Qualifications

Donald Hively

Mr. Hively is a 52 year old commercial motor vehicle (CMV) driver who holds a class A commercial drivers license (CDL) from the state of Pennsylvania. Mr. Hively has driven a truck for 36 years. He had an ICD placed due to ventricular tachycardia and a low ejection fraction which improved. The device has deployed several times, most recently due to ventricular tachycardia in October 2011. Mr. Hively would like to continue to drive a truck in interstate commerce, if he is granted an exemption.

Richard Tadsen

Mr Tadsen is a 72 year old CMV driver who holds holds a class B and class D CDL from the state of Iowa. Mr. Tadsen had an ICD placed in 2009, with a history that includes cardiomyopathy, low ejection fraction which has improved, and hypertension. He would like to obtain a CDL and drive a CMV in interstate commerce, if granted an exemption.

Richard Freund

Mr. Freund is a 59 year old CMV driver who holds a class C and class D CDL from the state of New Jersey. Mr. Freund had an ICD placed due to a congenital heart condition. His driving history has a Driving Under the Influence of Alcohol or Drugs (DUI) in 1988. He would like to obtain a CDL and drive a CMV in interstate commerce, as a courier transporting small packages for distances that are usually less than 100 miles, if granted an exemption.

Richard Rusk

Mr. Rusk is a 53 year old CMV driver who holds a class A CDL in Illinois. Mr. Rusk had an ICD placed in 2010 as part of a clinical trial for sarcoidosis. He has had no episode of syncope. The ICD has never deployed. His physician states that Mr. Rusk is at the lower risk end of persons with ICDs. Mr. Rusk would like to obtain a CDL and drive a CMV in interstate commerce, if granted an exemption.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business [Insert date 30 days after date of publication in the FEDERAL REGISTER]. Comments will be available for examination in the docket at the location listed under the **ADDRESSES**

section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: March 29, 2012

Larry W. Minor
Associate Administrator for Policy

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